

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JACQUELINE E. HARDYWAY</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>FARMLAND FOODS, INC.</b>	)	
Self-Insured Respondent	)	Docket No. 267,442
	)	
AND	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

The self-insured respondent requests review of the Order entered by Administrative Law Judge John D. Clark on October 8, 2002. On January 10, 2003, this case was placed on the summary docket for decision without oral argument.

**ISSUES**

The claimant sent a letter to the Workers Compensation Director requesting to implead the Workers Compensation Fund (Fund) in this case. On October 8, 2002, the Administrative Law Judge (ALJ) held a hearing on the motion to implead the Fund.

Claimant argued that respondent should be considered insolvent because it had filed for bankruptcy. Consequently, claimant argued she should be allowed to proceed against the Fund. The Fund argued that because respondent had filed for reorganization under Chapter 11, there was no showing of insolvency. Respondent argued it is not insolvent and had filed for a reorganization in order to continue to do business. And respondent as well as the Fund represented that there was an automatic bankruptcy stay which prevented litigation against respondent.

The ALJ noted that in this case there were no orders in effect and that the hearing was strictly on the motion to implead. The ALJ concluded the Fund would be left in the case as a party and that claimant should reschedule her preliminary hearing.

Respondent's request for review alleged the ALJ exceeded his jurisdiction by allowing the Fund to be impleaded as a party without a specific finding of insolvency and

despite the United States Bankruptcy Court automatic stay prohibiting litigation against respondent.

Claimant argues respondent does not have standing to request review of an order against the Fund; that the order does not violate the automatic stay order because it was directed against the Fund and not respondent; and, that filing for bankruptcy should be interpreted to be insolvency. Claimant concludes the ALJ's Order should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The motion hearing held before the ALJ was limited to the issue whether claimant could implead the Fund. No evidence was taken. Although the attorneys' arguments focused on the issue of respondent's solvency and bankruptcy proceedings, the ALJ did not determine the respondent was insolvent. Nor did the ALJ enter any order against the Fund. The ALJ simply granted the motion to implead the Fund.

Ordinarily, the Fund is impleaded by written notice to the insurance commissioner and a hearing on the request to implead is not necessary. In this case a motion hearing was held but the substantive issue whether the respondent was insolvent was not decided and was left for determination at a later evidentiary hearing that claimant was advised to schedule. The addition of the Fund as a party to this case was an interlocutory procedural matter and could have been accomplished by the claimant without resort to hearing.<sup>1</sup> The ALJ allowed the Fund to be impleaded and added as a party. But the ALJ did not issue any other orders.

The respondent's request for review noted the Fund could not be impleaded without a specific finding of insolvency. That is not correct. The Fund can be added as a party simply by providing written notice to the commissioner of insurance. After the Fund is properly impleaded, it is entitled to a hearing before it may be required to pay benefits due to the employer's inability to pay.<sup>2</sup>

The Board finds that the ALJ's Order is not a preliminary hearing order brought pursuant to the K.S.A. 44-534a. And the Board finds the Order which is the subject of this appeal, is not a final order, award, modification of an award, or preliminary award as contemplated by K.S.A. 44-551(b)(1). The Board concludes the Order is an interlocutory decision made by the ALJ during the process of a workers compensation case. It is an

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<sup>1</sup> K.S.A. 44-566a(c)(1).

<sup>2</sup> K.A.R. 51-15-2.

Order the ALJ has the authority to make, during the trial process, and the Board lacks jurisdiction to review the Order until it is contained in a final order or award.

The Board is not unmindful that the administrative file contains a Temporary Restraining Order, dated October 30, 2002, entered by United States Bankruptcy Judge Jerry W. Venters. The claimant is specifically restrained from proceeding against the respondent or the Fund. The Order is effective no longer than 60 days from the date of the Order unless extended by further order.

Because the workers compensation case has not proceeded against either the Fund or respondent, it is premature to allege any violation of either the automatic bankruptcy stay or the Temporary Restraining Order. The ALJ's addition of the Fund as a party, without more, was simply a procedural ministerial matter in anticipation of possible further litigation, but it did not decide any substantive issues. If the claimant is allowed to proceed with her workers compensation claim, the Fund will be a party at any future evidentiary hearings and entitled to litigate the issues regarding its liability.

**AWARD**

**WHEREFORE**, the respondent's appeal from the Order of Administrative Law Judge John D. Clark dated October 8, 2002, should be, and is hereby dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of February 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: William A. Wells, Attorney for Claimant  
Edward D. Heath, Attorney for Respondent  
Garry W. Howard, Attorney for Fund  
John D. Clark, Administrative Law Judge  
Director, Division of Workers Compensation